UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/810,334	03/14/2001	Stephen J. Brown	HERO-1-1111 / 014030.0146	6688

60683	7590	10/05/2006	

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EXAMINER
KOPPIKAR, VIVEK D

ART UNIT	PAPER NUMBER
3626	

DATE MAILED: 10/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/810,334	BROWN, STEPHEN J.
	Examiner	Art Unit	
	Vivek D. Koppikar	3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 July 2006*.

2a)☒ This action is **FINAL.**   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Status of the Application

1.   Claims 1-19 have been examined in this application. This Final Office Action is in
response to the "Amendment" and "Remarks" filed on July 6, 2006.

Claim Rejections - 35 USC § 103

2.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all
obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

3.   Claims 1-7, 9-16 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable
over US Patent Number 5,897,493 to Brown in view of US Patent Number 5,765,139 to Bondy.

(A)   As per claim 1, Brown teaches a system for coding and updating a patient profile and for
providing customized health information to an individual (Brown: Abstract), said system
comprising:

a server (Brown: Col. 4, Ln. 43-51);

a remote interface for entering in said server questions to be answered by said individual
(Brown: Col. 4, Ln. 51-54); and a remotely programmable apparatus for interacting with said
individual, said remotely programmable apparatus being in communication with said server via a
communication network (Brown: Col. 4, Ln. 56-60 and Col. 11, Ln. 45-54);

wherein said server comprises:

a questionnaire generator for generating a questionnaire comprising questions for
determining at least one of a physical condition of said individual, a mental condition of said

individual, and a behavior of said individual, and for transmitting said questionnaire from said server to said remotely programmable apparatus (Figures 2 and 5 ((94) and 98)) and Col. 5, Ln. 7-19);

a data gatherer connected to said questionnaire generator for receiving from said remotely programmable apparatus said individual's responses to said questions into a profile for said individual (Brown: Abstract; Col. 8, Ln. 19-23 and Col. 11, Ln. 45-54);

a script generator connected to said data gatherer for generating a customized script program from questions based on said individual's physical, mental, and behavioral profiles, and for transmitting said customized script program to said remotely programmable apparatus;

a report generator for generating a report comprising said individual's profiles and said assigned customized script program (Brown: Figure 5 and Col. 5, Ln. 28-39); and

a database connected to said questionnaire generator, said data gatherer, and said script generator for storing said profiles (Brown: Col. 5, Ln. 13-19);

and wherein said remotely programmable apparatus (Brown: Col. 4, Ln. 55-60) comprises:

a communication means for receiving said questionnaire and said script program from said server and for transmitting said responses to said server (Brown: Col. 4, Ln. 47-51);

a user interface for communicating said questionnaire and said script program to said individual and for receiving said responses (Brown: Col. 4, Ln. 49-51);

a memory for storing said questionnaire, said script program, and said responses (Brown: Col. 7, Ln. 1-9); and

a processor connected to said communication means, said user interface and said memory

for executing said questionnaire and said script program to communicate said questions to said

individual, to receive said responses to said questions, and to transmit said responses to said

server (Brown: Col. 7, Ln. 11-17).

Brown does not teach the following (structural) feature which is taught by Bondy (Figure

2 (Arrows 210, 212, 214) and Col. 3, Ln. 30-35):

a three dimensional data structure.

At the time of the invention, one of ordinary skill in the art would have been motivated

to modify the teachings of Brown with the aforementioned teachings from Bondy with the

motivation of having a means of automatically transforming data from one type of data structure

into another type of data structure, as recited in Bondy (Col. 2, Ln. 15-20).

The combined teachings of Brown in view of Bondy do not teach that the first dimension

represents an aspect of care, a second dimension represents an expression of risk and a third

dimension represents a level of risk, however, these differences are only found in the non-

functional descriptive material and are not functionally involved in the steps recited nor do they

alter the recited structural elements. The recited method steps would be performed the same

regardless of the specific data. Further, the structural elements remain the same regardless of the

specific data. Thus, this descriptive material will not distinguish the claimed invention from the

prior art in terms of patentability, *see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404*

(Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.

At the time of the invention, it would have been obvious for one of ordinary skill in the

art to have modified the combined teachings of Brown in view of Bondy so that the three

dimensional data structure contained the three above mentioned types of data with the motivation

of having a means of better being able to provide a patient with an assessment of risk relating to

their aspect of care.

(B)   As per claim 2, in Brown after the responses are transmitted to said server, said profile of

said individual is updated based on said responses (Brown: Col. 5, Ln. 63-Col. 6, Ln. 4).

(C)   As per claim 3, in Brown the profile further comprises a registration means for

registering a name of said individual, a language of said individual, and a current health

condition of said individual; and said questionnaire generator and said script generator comprise

a tailoring means for tailoring said questionnaire and said script program in dependence upon

said language and said current health condition of said individual (Brown: Col. 4, Ln. 59-60).

(D)   As per claim 4, in Brown the questionnaire generator further includes a confirmation

means for confirming with said individual said profile (Brown: Col. 8, Ln. 65-Col. 9, Ln. 8).

(E)   As per claim 5, in Brown the script program comprises: a request for responses to said

questions from said remotely programmable apparatus;

        a question related to the health monitoring of said invdividual; and educational

information (Brown: Col. 5, Ln. 9-15 and Ln. 33-42).

(F)   As per claim 6, in Brown the educational information comprises means for accessing an

external source of additional educational information and means for transferring said additional

educational information from said external source to said remotely programmable apparatus

(Brown: Col. 10, Ln. 8-15).

(G)   As per claim 7, in Brown the data relating to said physical condition of said individual comprise measurements which are received from a monitoring device connected to said remotely programmable apparatus (Brown: Col. 4, Ln. 61-Col. 5, Ln. 6).

(I)   As per claim 9, in Brown the data related to said physical condition of said individual comprises electronic medical records received from a health-care provider of said individual (Brown: Col. 8, Ln. 5-24).

(J)   As per claim 10, Brown teaches a method for providing customized health information to an individual to induce a modification in a health-related behavior of said individual (Brown: Abstract), said method comprising:

exchanging data with a server through a communication network, wherein said data a script program executable by said remotely programmable apparatus to communicate questions to said individual, to receive responses to said questions, and to transmit said responses to said server (Brown: Col. 4, Ln. 51-60);

transferring from said server to said remotely programmable apparatus said questionnaire containing questions for determining a physical condition, a mental condition, and behavior of said individual (Brown: Col. 5, Ln. 55-62);

receiving in said server responses to said questions entered by said individual from said remotely programmable apparatus (Brown: Col. 5, Ln. 55-58);

generating from said responses a profile of said individual (Brown: Figure 5 and Col. 5, Ln. 28-39)

generating a customized script program for said individual based on said profile (Brown: Figure 2 (54) and Col . 6, Ln. 26-34); and

transferring said customized script program to said remotely programmable apparatus

(Figure 2 (26) and Col. 6, Ln. 25-30).

Brown does not teach the following (structural) feature which is taught by Bondy (Figure

2 (Arrows 210, 212, 214) and Col. 3, Ln. 30-35):

a three dimensional data structure.

At the time of the invention, one of ordinary skill in the art would have been motivated

to modify the teachings of Brown with the aforementioned teachings from Bondy with the

motivation of having a means of automatically transforming data from one type of data structure

into another type of data structure, as recited in Bondy (Col. 2, Ln. 15-20).

The combined teachings of Brown in view of Bondy do not teach that the first dimension

represents an aspect of care, a second dimension represents an expression of risk and a third

dimension represents a level of risk, however, these differences are only found in the non-

functional descriptive material and are not functionally involved in the steps recited nor do they

alter the recited structural elements. The recited method steps would be performed the same

regardless of the specific data. Further, the structural elements remain the same regardless of the

specific data. Thus, this descriptive material will not distinguish the claimed invention from the

prior art in terms of patentability, *see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404*

(Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.

At the time of the invention, it would have been obvious for one of ordinary skill in the

art to have modified the combined teachings of Brown in view of Bondy so that the three

dimensional data structure contained the three above mentioned types of data with the motivation

of having a means of better being able to provide a patient with an assessment of risk relating to their aspect of care.

(K)   As per claim 11, Brown teaches said profile and generating an additional script program after said server receives said responses (Brown: Col. 5, Ln. 63-Col. 6, Ln. 4).

(L)   As per claim 12, Brown teaches registering a name, a language of said individual, and said current health condition of said individual in said server prior to transferring said questionnaire; and tailoring said questionnaire and said script program to said individual in dependence upon said language and said current health condition of said individual (Brown: Col. 4, Ln. 59-60).

(M)   As per claim 13, in Brown the script program comprises:

a request for responses to said questions from said remotely programmable apparatus;

a question related to health monitoring of said individual; and educational information (Brown: Col. 5, Ln. 9-15 and Ln. 33-42).

(N)   As per claim 14, in Brown the educational information comprises means for accessing an external source of additional educational information and means for transferring said additional educational information from said external source to said remotely programmable apparatus (Brown: Col. 10, Ln. 8-15).

(O)   As per claim 15, Brown further comprising generating a report comprising said individual's profiles (Brown: Col. 6, Ln. 25-34).

(P)   As per claim 16, in Brown the data relating to said physical condition comprises measurements which are received by said server from a monitoring device connected to said remotely programmable apparatus (Brown: Col. 4, Ln. 61-Col. 5, Ln. 6 and Col. 6, Ln. 25-34).

(R)   As per claim 18, in Brown the data relating to said physical condition of said individual

comprises electronic medical records received from a health-care provider of said individual

(Brown: Col. 8, Ln. 5-24).

(S)   As per claim 19, in Brown teaches a clinician computer system, the clinician system in

communicating with one or more patient device (Brown: Abstract), the clinician system

comprising: a database comprising questions, answer and follow-up actions (Brown: Col. 5, Ln.

55-62);

        a display (Brown: Col. 4, Ln. 43-51);

        a processor (Brown: Col. 6, Ln. 64-Col. 7, Ln. 9) ; and

        a graphical user interface executed by the processor and presented on the display

comprising (Brown: Figure 9 and Col. 4, Ln. 43-51)

        a selection component for selecting a question, answer or follow-up action from the

database (Brown: Figure 5 and Col. 5, Ln. 28-39);

        an icon generator for generating and displaying an icon associated with the selected

question, answer or follow-up action (Brown: Col. 5, Ln. 52-62);

        a linking component for linking displayed icon (Brown: Figure 5 and Col. 5, Ln. 35-39);

and

        a conversion component for converting linked displayed icons into a scrip program

(Brown: Col. 5, Ln. 39-62);

        a sending component for sending the script program to a patient device over a

communication network (Brown: Col. 5, Ln. 63-Col. 6, Ln. 4).

Brown does not teach the following (structural) feature which is taught by Bondy (Figure 2 (Arrows 210, 212, 214) and Col. 3, Ln. 30-35):

a three dimensional data structure.

At the time of the invention, one of ordinary skill in the art would have been motivated to modify the teachings of Brown with the aforementioned teachings from Bondy with the motivation of having a means of automatically transforming data from one type of data structure into another type of data structure, as recited in Bondy (Col. 2, Ln. 15-20).

The combined teachings of Brown in view of Bondy do not teach that the first dimension represents an aspect of care, a second dimension represents an expression of risk and a third dimension represents a level of risk, however, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.*

At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the combined teachings of Brown in view of Bondy so that the three dimensional data structure contained the three above mentioned types of data with the motivation of having a means of better being able to provide a patient with an assessment of risk relating to their aspect of care.

Claim Rejections - 35 USC § 103

4.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

5.   Claims 8 and 17 rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in

view of Bondy, as applied to Claims 1 and 10, above, respectively, in view of US Patent

Application Publication 2002/0010597 to Mayer.

(A)   As per claims 8 and 17, Brown does not teach that the data related to the physical

condition of the individual comprises electronic medical claims received from a health-care

provider of the individual (Figure 5 and Section [0046]). At the time of the invention, it would

have been obvious for one of ordinary skill in the art to have modified the system and method of

Brown by adding the aforementioned feature from Mayer with the motivation of providing an

enhanced computerized tool for maintaining and managing various aspects of patients'

healthcare as recited in Mayer (Section [0003]).

Response to Arguments

6.   Applicant's arguments filed on July 6, 2006 with respect to claims 1-19 have been

considered but are moot in view of the new grounds of rejection.

Conclusion

7.   Applicant's amendment necessitated the new ground(s) of rejection presented in this

Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this

final action.

8.   Any inquire concerning this communication or earlier communications from the

examiner should be directed to Vivek Koppikar, whose telephone number is (571) 272-5109.

The examiner can normally be reached from Monday to Friday between 8 AM and 4:30 PM.

If any attempt to reach the examiner by telephone is unsuccessful, the examiner's

supervisor, Joseph Thomas, can be reached at (571) 272-6776. The fax telephone numbers for

this group are either (571) 273-8300 or (703) 872-9326 (for official communications including
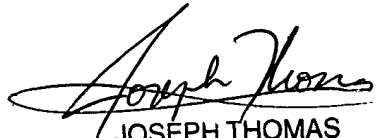
After Final communications labeled "Box AF").

Another resource that is available to applicants is the Patent Application Information

Retrieval (PAIR). Information regarding the status of an application can be obtained from the

(PAIR) system. Status information for published applications may be obtained from either

Private PAIR or Public PAX. Status information for unpublished applications is available

through Private PAIR only. For more information about the PAIR system, see http://pair-

direct.uspto.gov. Should you have questions on access to the Private PAIR system, please feel

free to contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sincerely,

Vivek Koppikar

7/25/2006

JOSEPH THOMAS
SUPERVISORY PATENT EXAMINER